

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DWAYNE SIMS,

Plaintiffs,

v.

C/O MCCLOUD, et al.,

Defendants.

Case No. 1:23-cv-00105

Hopkins, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

This civil action is now before the Court on Plaintiff's application for entry of default (Doc. 17) and the Defendants' responsive memoranda. (Doc. 18). Upon careful review, the undersigned finds that Plaintiff's application is not well-taken.

Plaintiff's complaint was filed on February 6, 2023. On May 8, 2023, United States Magistrate Judge Bowman performed a *sua sponte* review of the complaint and determined the action may proceed. (Doc. 11). The United States Marshal Service then served the complaint upon the Defendants on May 31, 2023. Fifteen days later, Defendants filed a response to the complaint on June 15, 2023. Thereafter, on June 26, 2023, Plaintiff filed his application for entry of default against the Defendants.

Plaintiff's application for default asserts that Defendants were served with the complaint on May 8, 2023. As such, Plaintiff claims that more than twenty days have elapsed between the complaint being served upon the Defendants and the Defendants filing a response to the complaint. (Doc. 17). On July 18, 2023, Defendants filed a response in opposition to Plaintiff's request for entry of default. (Doc. 18).

Based on the record before the Court, entry of default is not warranted. Rule 12(a)(1)(A)(i) plainly states that a responsive pleading must be filed “within 21 days after being served with the summons and complaint.” Here, Defendant filed its answer 15 days after receiving service of the complaint, well within the 21-day period. Furthermore, in light of the Sixth Circuits “strong preference for trials on the merits” entry of default against Defendant is unwarranted. See *Shepard Claims Serv., Inc. v. William Darrah & Assoc.*, 796 F.2d 190, 193 (6th Cir. 1986).

Accordingly, **IT IS RECOMMENDED THAT** Plaintiff’s application for entry of default against Defendant (Doc. 17) be **DENIED**.

s/Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within FOURTEEN (14) DAYS after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within FOURTEEN DAYS after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).